
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4304.1/08

ATTY/TYPIST: AP:rls

BRIEF DESCRIPTION: Regarding alternative public works contracting procedures.

1 AN ACT Relating to alternative public works; amending RCW
2 39.10.230, 39.10.250, 39.10.270, 39.10.300, and 39.10.330; and
3 repealing RCW 39.10.310.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 39.10.230 and 2007 c 494 s 103 are each amended to
6 read as follows:

7 The board has the following powers and duties:

8 (1) Develop and recommend to the legislature policies to further
9 enhance the quality, efficiency, and accountability of capital
10 construction projects through the use of traditional and alternative
11 delivery methods in Washington, and make recommendations regarding
12 expansion, continuation, elimination, or modification of the
13 alternative public works contracting methods;

14 (2) Evaluate the use of existing contracting procedures and
15 potential future use of other alternative contracting procedures
16 including competitive negotiation contracts;

17 (3) Develop guidelines to be used by the committee for the review
18 and approval of design-build demonstration projects that procure
19 operations and maintenance services;

1 (4) Appoint members of the committee; and
2 (~~((4))~~) (5) Develop and administer questionnaires designed to
3 provide quantitative and qualitative data on alternative public works
4 contracting procedures on which evaluations are based.

5 **Sec. 2.** RCW 39.10.250 and 2007 c 494 s 105 are each amended to
6 read as follows:

7 The committee shall:

8 (1) Certify, or recertify, public bodies for a period of three
9 years to use the design-build or general contractor/construction
10 manager, or both, contracting procedures for projects with a total
11 project cost of ten million dollars or more;

12 (2) Review and approve the use of the design-build or general
13 contractor/construction manager contracting procedures on a project by
14 project basis for public bodies that are not certified under RCW
15 39.10.270; (~~and~~)

16 (3) Review and approve the use of the general
17 contractor/construction manager contracting procedure by certified
18 public bodies for projects with a total project cost under ten million
19 dollars;

20 (4) Review and approve a total of ten projects using the design-
21 build contracting procedure by certified and noncertified public bodies
22 for projects that have a total project cost between two million and ten
23 million dollars. Projects must meet the criteria in RCW 39.10.300(1).
24 In June 2010, the committee shall report to the board regarding the
25 committee's review procedure of these projects and its recommendations
26 for further use; and

27 (5) Review and approve not more than two design-build demonstration
28 projects that include procurement of operations and maintenance
29 services for a period longer than three years.

30 **Sec. 3.** RCW 39.10.270 and 2007 c 494 s 107 are each amended to
31 read as follows:

32 (1) A public body may apply for certification to use the design-
33 build or general contractor/construction manager contracting procedure,
34 or both. Once certified, a public body may use the contracting
35 procedure for which it is certified on individual projects with a total
36 project cost over ten million dollars without seeking committee

1 approval. The certification period is three years. A public body
2 seeking certification must submit to the committee an application in a
3 format and manner as prescribed by the committee. The application must
4 include a description of the public body's qualifications, its capital
5 plan during the certification period, and its intended use of
6 alternative contracting procedures.

7 (2) A public body seeking certification for the design-build
8 procedure must demonstrate successful management of at least one
9 design-build project within the previous five years. A public body
10 seeking certification for the general contractor/construction manager
11 procedure must demonstrate successful management of at least one
12 general contractor/construction manager project within the previous
13 five years.

14 (3) To certify a public body, the committee shall determine that
15 the public body:

16 (a) Has the necessary experience and qualifications to determine
17 which projects are appropriate for using alternative contracting
18 procedures;

19 (b) Has the necessary experience and qualifications to carry out
20 the alternative contracting procedure including, but not limited to:
21 (i) Project delivery knowledge and experience; (ii) personnel with
22 appropriate construction experience; (iii) a management plan and
23 rationale for its alternative public works projects; (iv) demonstrated
24 success in managing public works projects; (v) ~~((demonstrated success~~
25 ~~in managing at least one general contractor/construction manager or~~
26 ~~design-build project within the previous five years; (vi)))~~ the ability
27 to properly manage its capital facilities plan including, but not
28 limited to, appropriate project planning and budgeting experience; and
29 ~~((+vii+))~~ (vi) the ability to meet requirements of this chapter; and

30 (c) Has resolved any audit findings on previous public works
31 projects in a manner satisfactory to the committee.

32 ~~((+3+))~~ (4) The committee shall, if practicable, make its
33 determination at the public meeting during which an application for
34 certification is reviewed. Public comments must be considered before
35 a determination is made. Within ten business days of the public
36 meeting, the committee shall provide a written determination to the
37 public body, and make its determination available to the public on the
38 committee's web site.

1 (~~((4))~~) (5) The committee may revoke any public body's
2 certification upon a finding, after a public hearing, that its use of
3 design-build or general contractor/construction manager contracting
4 procedures no longer serves the public interest.

5 (~~((5))~~) (6) The committee may renew the certification of a public
6 body for one additional three-year period. The public body must submit
7 an application for recertification at least three months before the
8 initial certification expires. The application shall include updated
9 information on the public body's capital plan for the next three years,
10 its intended use of the procedures, and any other information requested
11 by the committee. The committee must review the application for
12 recertification at a meeting held before expiration of the applicant's
13 initial certification period. A public body must reapply for
14 certification under the process described in subsection (1) of this
15 section once the period of recertification expires.

16 (~~((6))~~) (7) Certified public bodies must submit project data
17 information as required in RCW 39.10.320 and 39.10.350.

18 **Sec. 4.** RCW 39.10.300 and 2007 c 494 s 201 are each amended to
19 read as follows:

20 (1) Subject to the process in RCW 39.10.270 or 39.10.280, public
21 bodies may utilize the design-build procedure for public works projects
22 in which the total project cost is over ten million dollars and where:

23 (a) The design and construction activities, technologies, or
24 schedule to be used are highly specialized and a design-build approach
25 is critical in developing the construction methodology or implementing
26 the proposed technology; or

27 (b) The project design is repetitive in nature and is an incidental
28 part of the installation or construction; or

29 (c) Regular interaction with and feedback from facilities users and
30 operators during design is not critical to an effective facility
31 design.

32 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
33 bodies may use the design-build procedure for parking garages,
34 regardless of cost.

35 (3) The design-build procedure (~~(also)~~) may be used for the
36 construction or erection of preengineered metal buildings or

1 prefabricated modular buildings, regardless of cost and is not subject
2 to approval by the committee.

3 (4) Except for utility projects and approved demonstration
4 projects, the design-build procedure may not be used to procure
5 operations and maintenance services for a period longer than three
6 years. State agency projects that propose to use the design-build-
7 operate-maintain procedure shall submit cost estimates for the
8 construction portion of the project consistent with the office of
9 financial management's capital budget requirements. Operations and
10 maintenance costs must be shown separately and must not be included as
11 part of the capital budget request.

12 (5) Subject to the process in RCW 39.10.280, public bodies may use
13 the design-build procedure for public works projects in which the total
14 project cost is between two million and ten million dollars and that
15 meet one of the criteria in subsection (1)(a), (b), or (c) of this
16 section. Where possible, the committee shall approve projects among
17 multiple public bodies.

18 (6) A public body may seek committee approval for a design-build
19 demonstration project that includes procurement of operations and
20 maintenance services for a period longer than three years.

21 **Sec. 5.** RCW 39.10.330 and 2007 c 494 s 204 are each amended to
22 read as follows:

23 (1) Contracts for design-build services shall be awarded through a
24 competitive process using public solicitation of proposals for design-
25 build services. The public body shall publish at least once in a legal
26 newspaper of general circulation published in, or as near as possible
27 to, that part of the county in which the public work will be done, a
28 notice of its request for qualifications from proposers for design-
29 build services, and the availability and location of the request for
30 proposal documents. The request for qualifications documents shall
31 include:

32 (a) A general description of the project that provides sufficient
33 information for proposers to submit qualifications;

34 (b) The reasons for using the design-build procedure;

35 (c) A description of the qualifications to be required of the
36 proposer including, but not limited to, submission of the proposer's
37 accident prevention program;

1 (d) A description of the process the public body will use to
2 evaluate qualifications and finalists' proposals, including evaluation
3 factors and the relative weight of factors and any specific forms to be
4 used by the proposers;

5 (i) Evaluation factors for request for qualifications shall
6 include, but not be limited to, technical qualifications, such as
7 specialized experience and technical competence; capability to perform;
8 past performance of the proposers' team, including the architect-
9 engineer and construction members; and other appropriate factors. Cost
10 or price-related factors are not permitted in the request for
11 qualifications phase;

12 (ii) Evaluation factors for finalists' proposals shall include, but
13 not be limited to, the factors listed in (d)(i) of this subsection, as
14 well as technical approach design concept; proposal price; ability of
15 professional personnel; past performance on similar projects; ability
16 to meet time and budget requirements; ability to provide a performance
17 and payment bond for the project; recent, current, and projected
18 workloads of the firm; and location. Alternatively, if the public body
19 determines that all finalists will be capable of producing a design
20 that adequately meets project requirements, the public body may award
21 the contract to the firm that submits the responsive proposal with the
22 lowest price;

23 (e) The form of the contract to be awarded;

24 (f) The amount to be paid to finalists submitting responsive
25 proposals and who are not awarded a design-build contract;

26 (g) The schedule for the procurement process and the project; and

27 (h) Other information relevant to the project.

28 (2) The public body shall establish an evaluation committee to
29 evaluate the responses to the request for qualifications based on the
30 factors, weighting, and process identified in the request for
31 qualifications. Based on the evaluation committee's findings, the
32 public body shall select not more than five responsive and responsible
33 finalists to submit proposals. The public body may, in its sole
34 discretion, reject all proposals and shall provide its reasons for
35 rejection in writing to all proposers.

36 (3) Upon selection of the finalists, the public body shall issue a
37 request for proposals to the finalists, which shall provide the
38 following information:

1 (a) A detailed description of the project including programmatic,
2 performance, and technical requirements and specifications; functional
3 and operational elements; minimum and maximum net and gross areas of
4 any building; and, at the discretion of the public body, preliminary
5 engineering and architectural drawings; and

6 (b) The target budget for the design-build portion of the project.

7 (4) The public body shall establish an evaluation committee to
8 evaluate the proposals submitted by the finalists. Design-build
9 contracts shall be awarded using the procedures in (a) or (b) of this
10 subsection. The public body must identify in the request for
11 qualifications which procedure will be used.

12 (a) The finalists' proposals shall be evaluated and scored based on
13 the factors, weighting, and process identified in the initial request
14 for qualifications and in any addenda published by the public body.
15 Public bodies may request best and final proposals from finalists. The
16 public body shall initiate negotiations with the firm submitting the
17 highest scored proposal. If the public body is unable to execute a
18 contract with the firm submitting the highest scored proposal,
19 negotiations with that firm may be suspended or terminated and the
20 public body may proceed to negotiate with the next highest scored firm.
21 Public bodies shall continue in accordance with this procedure until a
22 contract agreement is reached or the selection process is terminated.

23 (b) If the public body determines that all finalists are capable of
24 producing a design that adequately meets project requirements, the
25 public body may award the contract to the firm that submits the
26 responsive proposal with the lowest price.

27 (5) The firm awarded the contract shall provide a performance and
28 payment bond for the contracted amount. The public body shall provide
29 appropriate honorarium payments to finalists submitting (~~best and~~
30 ~~final~~) responsive proposals that are not awarded a design-build
31 contract. Honorarium payments shall be sufficient to generate
32 meaningful competition among potential proposers on design-build
33 projects. In determining the amount of the honorarium, the public body
34 shall consider the level of effort required to meet the selection
35 criteria.

36 NEW SECTION. **Sec. 6.** RCW 39.10.310 (Design-build procedure--

1 Negotiated adjustments to lowest bid or proposal--When allowed) and
2 2007 c 494 s 202 & 1994 c 132 s 8 are each repealed.

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